

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA

JEREMY D. ALLEN,)
vs.)
Petitioner,)
OKLAHOMA COUNTY, et al.,)
Respondents.)
CIV-09-1045-M

REPORT AND RECOMMENDATION

Petitioner, a state prisoner appearing *pro se*, brings this Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. §2254. The matter was referred to the undersigned Magistrate Judge for initial proceedings consistent with 28 U.S.C. §636(b)(1)(B). On September 28, 2009, the undersigned entered an Order To Petitioner To Cure Deficiency giving Petitioner until October 19, 2009, to submit a motion to proceed *in forma pauperis* or pay the \$5 filing fee. On October 1, 2009, Petitioner filed an affidavit which included a statement of the funds in his prison accounts in February 2009 together with a request to proceed *in forma pauperis*. Having reviewed said affidavit, the undersigned finds that Petitioner has sufficient financial resources to pay the \$5.00 filing fee. Because he does not qualify for authorization to proceed without prepayment of the filing fee, Petitioner's motion should be denied, and he should be required to pay the full filing fee for this action to proceed.

RECOMMENDATION

Based on the foregoing findings, it is recommended that Petitioner's request to proceed *in forma pauperis* be DENIED and the action be dismissed without prejudice unless Petitioner pays the full filing fee to the Clerk of the Court by October 29th, 2009. Petitioner is advised of his right to file an objection to this Report and Recommendation with the Clerk of this Court by October 29th, 2009, in accordance with 28 U.S.C. §636 and LCvR 72.1. The failure to timely object to this Report and Recommendation would waive appellate review of the recommended ruling. Moore v. United States of America, 950 F.2d 656 (10th Cir. 1991); cf. Marshall v. Chater, 75 F.3d 1421, 1426 (10th Cir. 1996) ("Issues raised for the first time in objections to the magistrate judge's recommendations are deemed waived.").

This Report and Recommendation disposes of all issues referred to the undersigned Magistrate Judge in the captioned matter.

ENTERED this 9th day of October, 2009.


GARY M. PURCELL
UNITED STATES MAGISTRATE JUDGE